## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Leping Huang

Title: BLUETOOTH PERSONAL AREA

NETWORK ROUTING PROTOCOL

OPTIMIZATION USING CONNECTIVITY METRIC

Appl. No.: 10/606,437

Filing Date: 6/25/2003

Patent No.: 7,706,282

Grant Date: 4/27/2010

Examiner: Christine Y. Ng

Art Unit: 2416

Confirmation 6335

Number:

## REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT UNDER 37 C.F.R. §1.705(d)

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Applicants have calculated PTA for the captioned patent and have determined that the patent is entitled to 166 days of Patent Term Adjustment, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702, 1.703 and 1.704:

(a) Total PTO delay: 431 days

(b) Total Applicant delay: 265 days

Final PTA Determination under 37 CFR §1.703(f): 166 days

In accordance with 1.705(b)(2)(ii), the relevant dates as specified in §§1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are clearly represented in the attached PTA Calculation.

The relevant dates where the applicant is not in agreement with the PTO's determination are discussed in more detail below.

The Patent Office determined that the patent was entitled to 97 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On January 7, 2010, the U.S. Court of Appeals for the Federal Circuit affirmed the September 30, 2008 decision of the United States District Court for the District of Columbia finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. Wyeth v. Kappos, No. 2009-1120 (Jan. 7, 2010). The Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that "[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do not 'overlap' under section 154 (b)(2)."

In accordance with §1.705(b)(2)(iv)(A), the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704 are clearly represented in the attached PTA Calculation.

Applicants therefore respectfully request that the patent be accorded 166 days PTA.

Fees in the amount of \$200.00 set forth in 37 C.F.R. § 1.18(e) to cover the fee for this request are being paid by credit card via EFS-Web.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. § 1.705, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date June 21, 2010

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Telephone: (608) 258-4466 Facsimile: (608) 258-4258 Nicholas M. Lagerwall

Attorney for Applicant Registration No. 63,272

## CLOSE WINDOW AMAGES TO THE AGAINST THE CALCULATION System

Add a new event to this case

Docket Number: 088245-0113 Application Number: 10/606437 Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	06/25/2003	0		
Edit Delete	IDS NOT falling under 1.704(c)(6), (8) or (10) filed at PTO	08/12/2003	48		
	14 month From Application date	08/25/2004	427		
Edit Delete	Non-Final Office Action	10/04/2004	467	40	
	Non-Final Office Action + 3 months	01/04/2005	559		ı
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	04/07/2005	652		93
Edit Delete	Non-Final Office Action	06/29/2005	735		
	Non-Final Office Action + 3 months	09/29/2005	827		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/29/2005	888		61
Edit Delete	Non-Final Office Action	02/23/2006	974		
	Non-Final Office Action + 3 months	05/23/2006	1,063		ı
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/24/2006	1,064		1
Edit Delete	Non-Final Office Action	06/16/2006	1,087		
	3 Year Period Starts	06/25/2006	1,096	ı	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/29/2006	1,161		
Edit Delete	Final Office Action	11/09/2006	1,233		
Edit Delete	Final Office Action Response Received at PTO	01/16/2007	1,301		
	Final Office Action + 3 months	02/09/2007	1,325		ı
Edit Delete	Advisory Action	02/20/2007	1,336		
Edit Delete	Notice of Appeal Received at PTO	05/10/2007	1,415		90
	3 Year Period Stopped	07/17/2007	1,483	387	
Edit Delete	Request For Continued Examination (including amendment)	07/18/2007	1,484		
Edit Delete	Non-Final Office Action	10/12/2007	1,570		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	01/09/2008	1,659		
Edit Delete	Non-Final Office Action	04/09/2008	1,750		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/14/2008	1,785		

Edit Delete	Non-Final Office Action	06/23/2008	1,825			
Edit Delete	Non-Final Office Action Letter Restarting Period for Response	06/23/2008	1,825			
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	09/23/2008	1,917			
Edit Delete	Final Office Action	12/16/2008	2,001			
Edit Delete	Final Office Action Response Received at PTO	02/06/2009	2,053			
Edit Delete	Non-Final Office Action	03/16/2009	2,091			
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	06/10/2009	2,177			
Edit Delete	Notice of Allowance	09/28/2009	2,287			
Edit Delete	Rule 312 Amendment Received at PTO	12/23/2009	2,373			ı
Edit Delete	Issue Fee Paid	12/23/2009	2,373			Ī
Edit Delete	Response to Rule 312 Communication Received	01/11/2010	2,392			20
	Issue Fee Paid + 4 months	04/23/2010	2,494			
Edit Delete	Patent Grant Date	04/27/2010	2,498	4		
			Totals: PTA:	431	166	265



Version: 3.02.05 LOGIN: Linda Anderson IP: 10.24.4.21 Foley & Lardner LLP